

[SEE SIGNATURE PAGE FOR COUNSEL]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AUGME TECHNOLOGIES, INC.,

Plaintiff,

v.

YAHOO! INC.,

Defendant.

Case No. C-09-5386 CRB

**RENEWED JOINT CASE
MANAGEMENT STATEMENT**

JOINT CASE MANAGEMENT STATEMENT

Plaintiff Augme Technologies, Inc. (previously, Modavox, Inc.) and Defendant Yahoo! Inc. jointly submit this Renewed Case Management Statement and Proposed Order under Civil Local Rule 16-9(a), Patent Local Rule 2-1(a), and pursuant to the Court's March 17, 2010 Order Rescheduling Case Management Conference.

1. Jurisdiction and Service:

This Court has subject matter jurisdiction over Augme's claims under 28 U.S.C. §1338(a) because this case involves a claim of patent infringement under 35 U.S.C. § 271. Venue is proper in this court under 28 U.S.C. § 1391(b). Yahoo! has been served.

1 **2. Facts:**

2 Augme (then Modavox, Inc.) filed this suit on November 16, 2009. In its original
3 Complaint, Modavox alleged that Yahoo! directly and indirectly infringes the two asserted
4 patents -- U.S. Patent Nos. 6,594,691 (“the ’691 patent”) and 7,269,636 (“the ’636 patent”). The
5 two patents are respectively entitled “Method and system for adding function to a web page” and
6 “Method and code module for adding function to a Web page.” In its original Complaint,
7 Modavox further alleged that it is the sole and lawful owner of the asserted patents and that
8 Yahoo!’s products and services are infringing.

9 Yahoo! filed a motion to dismiss or, in the alternative, for a more definite statement on
10 January 15, 2010. In response, Modavox filed a First Amended Complaint on February 4, 2010.
11 On February 26, 2010, Yahoo! filed a renewed motion for a more definite statement. The basis
12 for Yahoo!’s two motions was that Modavox’s Complaints failed to identify the accused products
13 with specificity, and thus did not provide fair notice to Yahoo! of the claims against it. The
14 Parties thereafter conferred, agreed, and jointly requested that Modavox be allowed to file a
15 Second Amended Complaint and that Yahoo!’s renewed motion be taken off calendar. The Court
16 granted the Parties’ requests on March 30, 2010 and accepted Modavox’s Second Amended
17 Complaint. Yahoo! is scheduled to file its response to the Second Amended Complaint on April
18 12, 2010.

19 On March 30, 2010, the Court granted Modavox’s request to change the case caption,
20 replacing Plaintiff’s prior corporate name, Modavox, Inc., with its new corporate name, Augme
21 Technologies, Inc.

22 **3. Legal Issues:**

23 The currently known factual and legal issues have been set forth in the previous section.

24 **4. Motions:**

25 Plaintiff may file a motion for summary judgment and/or adjudication of infringement.

26 Depending on the products that Augme accuses of infringement, Yahoo! may file an early
27 summary judgment motion for non-infringement. Yahoo! anticipates moving for summary
28 judgment of invalidity for one or more claims of the asserted patents.

5. Amendment to Pleadings:

A proposed deadline for amending the pleadings appears below. This deadline (and all other proposed deadlines, below) largely follow the Patent Local Rules.

6. Evidence Preservation:

Each party represents that it has taken reasonable steps to preserve evidence relevant to the issues reasonably evident in this action, based on currently available information. The parties currently are conferring regarding the preservation of data relating to the Blue Lithium platform.

7. Disclosures:

The parties intend to make their respective Initial Disclosures by the deadline provided below.

8. Discovery:

(a) Generally: The parties intend to pursue discovery by taking depositions and by serving document requests, interrogatories, and requests for admission.

(b) Interrogatories: Parties may serve up to 25 interrogatories each.

(c) Requests for Admission: There is no limit on the number of requests for admission the parties may serve to establish the authenticity of documents. Aside from requests to authenticate documents, each party may serve up to 50 additional requests for admission. Requests for admission directed to document authentication shall be clearly denoted as such.

(d) Depositions of Parties and Third-Parties: Augme proposes that the parties follow the presumptive limit of 10 seven-hour depositions per side specified in the Federal Rules of Civil Procedure. Yahoo! proposes a limit of 70 total hours of depositions per side, including individual, third party, and Rule 30(b)(6) depositions, but excluding expert depositions.

(e) Depositions of Experts: Depositions of expert witnesses shall be limited to 7 hours per witness. The parties reserve the right to revisit the issue of the length of expert depositions as discovery progresses. If any party requests more than 7 hours for any particular expert, the parties agree to meet and confer in good faith to attempt to resolve the issue without intervention by the Court.

(f) Document Subpoenas on Third-Parties: The parties may serve as many document subpoenas on third-parties and as many depositions on written questions of custodians of business records of third-parties as needed.

(g) Protective Order: The parties have agreed to meet and confer on Plaintiff's suggested additions to the Northern District's default protective order.

(h) Electronic Discovery: The parties have agreed to meet and confer regarding the form of electronic discovery and the manner of production of source code and related data.

9. Class Actions.

This case is not a class action.

10. Related Cases.

On August 9, 2007, Modavox filed a patent infringement suit against Tacoda, Inc. in the Southern District of New York. *See Modavox, Inc. v. Tacoda, Inc.* (No. 07-CV-7088) ("Tacoda litigation"). In the Tacoda action, Modavox has alleged that Tacoda, Inc. is directly and indirectly infringing the '691 and '636 patents. The Court issued an interim claim construction ruling on March 25, 2009.

On September 10, 2008, Modavox filed a patent infringement suit against AOL, LLC, Time Warner, Inc., and Platform-A, Inc., in the Central District of California. *See Modavox, Inc. v. AOL LLC, Time Warner, Inc. & Platform-A, Inc.*, (No. 2:08-CV-05914) ("AOL litigation"). On Defendants' motion, the AOL litigation was transferred to the Southern District of New York and remains pending there as Case No. 1:09-cv-04299. In the AOL litigation, Modavox has alleged that AOL LLC and Platform-A, Inc. infringe its trademarks "Boombox Radio" and "Boombox" and that all defendants directly and indirectly infringe the '691 and '636 patents. A motion by Defendants to consolidate the AOL litigation with the Tacoda litigation was denied. The patent related claims in the AOL litigation were stayed on January 7, 2010, pending the outcome of the Tacoda litigation. The trademark related claims were not stayed.

11. Relief:

(a) Augme asks the Court to:

- (i) grant preliminary and permanent injunctive relief;
 - (ii) award damages in an amount to be proven at trial, but not less than a reasonable royalty;
 - (iii) declare that Defendant's infringement is willful and award triple damages for willful infringement;
 - (iv) award interest on damages, along with costs;
 - (v) declare that this case is exceptional under 35 U.S.C. § 285 and award attorneys' fees and costs; and
 - (vi) further relief as the Court deems equitable and just.
- (b) Yahoo! has not yet answered the Second Amended Complaint, but expects to request relief in its Answer.

12. Settlement and ADR.

The parties have filed their respective ADR certifications pursuant to ADR L.R. 3-5 and selected mediation as the ADR process.

13. Consent to Magistrate Judge for All Purposes.

The parties did not stipulate to proceed before a magistrate judge for all purposes.

14. Other References:

The parties do not believe this case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues:

The Court's claim construction ruling may narrow or dispose of certain claims or defenses. Additionally, Yahoo! believes that this action may be amenable to early resolution by summary judgment motion, depending on the products and services that Augme is accusing of infringement. Augme believes this action may be amenable to early resolution by motion for summary judgment and/or summary adjudication.

16. Expedited Schedule:

The parties do not believe that this case is appropriate for expedited handling using streamlined procedures.

17. Scheduling:

Proposed Dates	Court Order	Event/Authority
April 9, 2010		Initial Case Management Conference [Civil L.R. 16-10; February 16, 2010 Case Management Conference Order]
April 16, 2010		Initial Disclosures [FRCP 26(a)(1)]
May 7, 2010		Disclosure of Asserted Claims & Infringement Contentions & accompanying document production [Patent L.R. 3-1 & 3-2 (14 days after Initial Case Management Conference) with stipulated additional 14 days]
July 5, 2010		Invalidity Contentions & accompanying document production [Patent L.R. 3-3 & 3-4 (45 days after Patent L.R. 3-1 and 3-2 Disclosures) with stipulated additional 14 days]
July 19, 2010		Parties to exchange Proposed Terms & Claim Elements for Construction [Patent L.R. 4-1(a) (14 days after Patent L.R. 3-3 Contentions)]
August 9, 2010		Parties to exchange Preliminary Claim Constructions [Patent L.R. 4-2(a) (21 days after Patent L.R. 4-1 Disclosures)]
September 3, 2010		Parties to file Joint Claim Construction & Prehearing Statement; parties to exchange expert declarations or other disclosures on claim construction for any experts who will submit declarations or testify regarding claim construction at the Claim Construction Hearing. [Patent L.R. 4-3 (60 days after Patent L.R. 3-3 Contentions)]
October 3, 2010		Claim Construction Discovery Cut-Off [Patent L.R. 4-4 (30 days after Patent L.R. 4-3 Statement)]
October 25, 2010		Plaintiff to file Opening Brief on Claim Construction [Patent L.R. 4-5(a) (45 days after Patent L.R. 4-3 Statement) with stipulated additional 7 days]
November 22, 2010		Defendant to file Responsive Brief on Claim Construction [Patent L.R. 4-5(b) (Responsive Brief 14 days after Opening Brief) with stipulated additional 7 days]

Proposed Dates	Court Order	Event/Authority
December 13, 2010		Plaintiff to file Reply Brief on Claim Construction [Patent L.R. 4-5 (c) (Reply Brief 7 days after Responsive Brief) with stipulated additional 7 days]
January 10, 2010		Court conducts Claim Construction (<i>Markman</i>) Hearing [Patent L.R. 4-6 (2 weeks after Reply Brief)]
30 days after <i>Markman</i> Order		Last day for joinder of additional parties & amendment to pleadings
30 days after <i>Markman</i> Order		Opening expert reports on topics for which a party bears the burden of proof
50 days after <i>Markman</i> Order		Plaintiff to produce or make available for inspection & copying all documents relating to an opinion of counsel supporting any defense to a claim of willful infringement as to which Plaintiff agree privilege has been waived [Patent L.R. 3-7 (50 days after <i>Markman</i> Order)]
60 days after <i>Markman</i> Order		Expert reports on topics for which a party does not bear the burden of proof
60 days after <i>Markman</i> Order		Fact discovery cut-off
90 days after <i>Markman</i> Order		Expert discovery cut-off
May 27, 2011		Last day for hearing dispositive motion(s)
June 24, 2011		Pretrial Disclosure [FRCP 26(a)(3)]
June 24, 2011		Parties to file motions in limine
July 8, 2011		Objections to Pretrial Disclosure [FRCP 26(a)(3) (14 days after Pretrial Disclosure)]
July 8, 2011		Parties to file oppositions to motions in limine
July 15, 2011		Final Pretrial Conference [FRCP 16(b)]
July 29, 2011		Trial

18. Trial. The parties have requested a jury trial. The expected trial length is approximately two weeks.

1 **19. Disclosure of Non-Party Interested Entities or Persons.** The parties have filed
 2 Certifications of Interested Entities or Persons, as required by Civil L.R. 3-16 and Fed. R. Civ. P.
 3 7.1. Neither party currently has an interest to report under those rules.

4 **20. Other Matters.** Except as noted above, the parties are unaware of other matters that
 5 may facilitate the just, speedy, and inexpensive disposition of this matter.

6 Dated: April 2, 2010

7 Respectfully submitted,

8 By: /s/ David R. Shaub

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DECLARATION OF CONSENT

Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under penalty of perjury that concurrence in the filing of this document has been obtained from counsel for Plaintiff Augme Technologies, Inc. and Defendant Yahoo! Inc.

Dated: April 2, 2010

By: /s/ Jian Bin Gao

[PROPOSED] ORDER

The Court hereby adopts the Case Management Statement. The Court additionally orders:

Dated: April _____, 2010

By: _____
Honorable Charles R. Breyer
Judge of the United States District Court